
Is Mediation Right for You?

Consider mediation if:

- ▶ You are an *employee* who would like the opportunity to present your employment concerns in an informal manner and have them resolved quickly and fairly.
- ▶ You are an *employee* who is interested in maintaining a positive relationship with your employer and establishing mutual respect.
- ▶ You are an *employer* who is concerned with maintaining open communications with employees.
- ▶ You are an *employer* who desires to preserve and promote good will among your workforce.

For more information, contact:

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SOUTH CAROLINA HUMAN AFFAIRS COMMISSION

THE MEDIATION OPTION

**EXPEDITED RESOLUTION OF
EMPLOYMENT DISCRIMINATION
COMPLAINTS**

Fair

Mediation works for both employee and employer.

Efficient

Mediation achieves a prompt and decisive resolution of the dispute *and* saves time and money for everyone concerned.

Confidential

Mediation proceedings are private and informal among the parties attending and information conveyed during a mediation is not recorded for future use.

Questions & Answers

Q. Does the Human Affairs Commission require the parties to participate in mediation?

A. No. Participation in the mediation program is strictly voluntary. If either party declines to participate in mediation, the complaint will be investigated just like any other complaint.

Q. Who mediates discrimination complaints filed with the Human Affairs Commission?

A. Only mediators who are experienced and trained in mediation and equal employment opportunity law are assigned to mediate complaints. All mediators are neutral, unbiased professionals with no stake in the outcome.

Q. At what point in the administrative process will mediation take place?

A. Mediation normally takes place prior to an investigation of the complaint. However, it can take place at any point in the investigative process where the parties agree to mediation.

Q. Is the mediation process confidential?

A. Yes. In order to ensure confidentiality, the mediation program is insulated from the investigative process. Although notetaking is allowed during the session, no record of what took place during the mediation session is kept for later reference.

Q. How will the facts of the case be viewed by the mediator as opposed to an investigator?

A. An investigator gathers information from both parties to determine if the complaint is true or not, and then makes a decision based on the facts presented. The mediator makes no judgment as to the facts presented by either party, but hears them to understand the nature of the dispute. The facts are then used by the mediator to determine what impact they may have on each parties' personal and professional interests, i.e., what they really need to happen to resolve the complaint. The mediator then assists both parties in deciding how to secure those interests.

Q. What happens to a complaint if it is not resolved in mediation?

A. If a complaint is not resolved during the mediation process, it is assigned to an investigator just like any other complaint.

Q. Where will mediation sessions take place?

A. Mediation sessions will usually take place at the Human Affairs Commission offices or any site agreed upon by both parties. If necessary, the Commission will identify a neutral site for convening the parties.

Q. Who should attend a mediation session?

A. At a minimum, the complainant and a representative of the employer should attend the mediation session. The person representing the employer should be familiar with the facts of the charge and have the authority to settle the charge on behalf of the employer.

Q. Can the parties bring an attorney to the mediation session?

A. It is not necessary to have an attorney in order to participate in the mediation program. However, either party is free to be represented by an attorney. The mediator will decide what role the attorney will play during the mediation. The mediator may ask that they provide advice and counsel, but not speak for a party. If a party plans to bring an attorney to the mediation session, he or she should discuss this with the mediator prior to the mediation session.

Q. Are the parties required to pay for the mediation?

A. No. There is no fee for the mediation. However, each party is responsible for paying fees charged by its legal representative if it chooses to have one present.

Q. How long does the mediation session take?

A. The majority of mediations are completed in one session, which usually lasts from one to five hours.

Q. What happens when an agreement is reached?

A. A document is prepared containing the points agreed upon by the parties to resolve the complaint. The document is then signed by the parties, which governs their relationship with respect to the issues set forth in the complaint.

Q. What happens if a party does not comply with an agreement reached in mediation?

A. Any failure to abide by the Agreement is enforceable in court just like any other settlement agreement resolving a charge of discrimination.

About Mediation...

Mediation is a form of Alternative Dispute Resolution (ADR) offered by the South Carolina Human Affairs Commission as an alternative to the traditional investigatory process. It is an informal process in which a trained mediator helps the parties to negotiate a resolution to a charge of discrimination. The mediator does not decide who is right or wrong and has no authority to impose a settlement on the parties. Instead, the mediator helps the employee and employer air their differences and find common ground for a mutually agreed upon solution to the charge.

Program experience shows that employees and employers who participated in mediation indicate a high degree of satisfaction. It is a fair and efficient process that can avoid lengthy investigation and costly litigation.

Mediation is not...

A meeting at which the facts are used to prove who is right or wrong, guilty or innocent, winners or losers. It is not a forum to *seek revenge* for perceived wrong-doing or *affirmation* of action taken.

Mediation is...

A meeting in which the employer and the employee, assisted by a neutral third party (the mediator), reach a decision between themselves to resolve the dispute. It is a forum to *seek relief* for employment related